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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-692

ARCH K. STEINER, *Petitioner*

v.

FRANK L. BALL, JR. and PAUL COMPHER and ETTA MAE COMPHER, his wife, *Respondents*

BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

Respondents, in this, their Brief in Opposition to the Granting of a Writ of Certiorari prayed for by Petitioner, desire to cover only the question of Jurisdiction and the Question Presented.

JURISDICTION

Jurisdiction of the Supreme Court is said by Petitioner to be invoked under "Title 28, USC 1254(1), 62 Stat. 929" (Petitioner, page 2).

No such jurisdiction is conferred by the cited statute, which applies only to appeals from United States Circuit Courts of Appeals.

Only under the provisions of Title 28, USC 1257 is granted to the Supreme Court jurisdiction to review final judgments of the highest court of a state, and then only to test the validity of a treaty or statute of the United States, or to test the validiy under the Federal Constitution of a State statute or immunity.

Petitioner does not and could not assert any Federal question involved.

The decision of the Virginia Supreme Court here complained of was the holding by that Court that an action for money judgment and a complaint for specific performance by the Petitioner in the State Court were barred by the State Statute of Frauds, which State Statute is not attacked as repugnant to the Federal Constitution or any United States Statute.

Thus, no fact or statute upon which the jurisdiction of the Supreme Court may be invoked is set forth in the Petition.

QUESTION PRESENTED

While there is no designation in the Petition of the "Question Presented for Review" as required by the Supreme Court Rule 40, Respondents assume the last paragraph under the designation "Jurisdiction" (page 2) to have been intended as such a statement. It obviously does not present any Federal question but, on the contrary, would seek to have the Supreme Court act as an additional Virginia Court of Appeals to sit as a final Court of Appeal from the Court of last resort in Virginia, where State litigation and questions are, and must be, finally decided.

If such a burden could be thrust upon the Supreme Court, every unsuccessful party to an appeal in the

State Court of last resort could file a frivolous petition to the Supreme Court and artificially extend the time of finality of judgment of the ruling of all State courts. Such is exactly what is sought by the Petitioner in this case and a mere reading of the "question presented" under the erroneous designation "jurisdiction" in Petition (page 2) reveals the Petitioner to here complain of a single State question already decided. He does not complain of the validity of the State statutes. He complains only of the application of the statutes by the State Court, a matter necessarily within the final and exclusive jurisdiction of the State Courts.

CONCLUSION

Respondents respectfully submit that Petitioner has presented no question for which the jurisdiction of the Supreme Court may be invoked. Thus, Respondents deem it unnecessary to reply or comment further upon the Petition.

Respectfully submitted,

FRANK L. BALL, JR.
Counsel for Respondents